

Office of the United States Patent and Trademark Office

Appn. Number: 09/641,410
Appn. Filed: August 18, 2000
Date Due: May 7, 2005
Applicant: Alice Mary O'Donnell Kiely
Title: Edible Supports for Comestibles with Optional,
Edible Mess Guards and Drip Guards
Examiner/GAU: Robert Madsen/1761

Yorktown Heights, NY April 11, 2005

Renewed Petition under 37 CFR 1.137(a)

Assistant Commissioner for Patents
Washington, District of Columbia 20231

Sir:

In response to the correspondence of March 7, 2005, Applicant requests a Request for Continued Examination (RCE), to continue the prosecution of the above application. A submission is enclosed with new claims in lieu of the claims filed on June 8, 2004. Applicant requests that the amendment filed on June 8, 2004 not be entered. A check in the amount of \$395.00 is enclosed for the proper fee.

Claims:

1 - 27 (canceled)

28. (Withdrawn) A method of providing as supported comestible comprising:

- (a) providing a body of an edible substance,
- (b) providing an edible support, having first and second portions, for supporting said body,
- (c) inserting said first portion of said edible support, into said body, supporting said body, and
- (d) providing a second portion, having sufficient size outside of said body to provide a utilitarian support for said body.

29. (Withdrawn) The method of providing a supported comestible of claim 28, further including an edible, moisture-proof, coating on said edible support and said body.

30 - 67 (canceled)

68. (withdrawn) A method of providing a supported frozen comestible comprising:

- (a) providing a comestible comprising a body of an edible substance suitable for freezing,

- (b) providing an edible support, said edible support having first and second portions, for supporting said comestible,
 - (c) inserting said first portion of said edible support, into said comestible, said first portion comprising sufficient surface area and means for adherence inside said comestible to support said comestible,
 - (d) freezing said comestible and said edible support, and
 - (e) leaving said second portion, having sufficient surface area outside of said comestible to provide a utilitarian support for said comestible, whereby a consumer can enjoy a long lasting supported frozen confection, which includes eating the support.
69. (withdrawn) The method of providing a supported comestible of claim 68 wherein said edible support is a non-malleable support.
70. (withdrawn) The method of providing a supported comestible of claim 68 wherein said edible support is a candy support.
71. (withdrawn) The method of providing a supported comestible of claim 68, further including a sufficient size on said second portion so that a person can hold said edible support and said comestible with a hand.

72 - 94 (canceled)

95. (withdrawn) A method of providing a supported frozen comestible comprising:

- (a) providing a comestible comprising a body of an edible substance suitable for freezing,
- (b) providing a substantially composite edible support, said substantially composite edible support having first and second portions for supporting said comestible,
- (c) inserting said first portion of said edible support into said comestible, said first portion comprising sufficient surface area and means for adherence inside said comestible to support said comestible,
- (d) freezing said comestible and said substantially composite edible support, and
- (e) leaving said second portion, having sufficient surface area outside of said comestible to provide a utilitarian support for said comestible.

96. (withdrawn) The method of providing a supported frozen comestible of claim 95, further including means for providing a supported frozen comestible designed for a child.

97. (withdrawn) The method of providing a supported frozen comestible of claim 95 wherein said edible support comprises a confection, wherein said confection comprises a confection substitute.

98. (withdrawn) The method of providing a supported frozen comestible of claim 95, further including a sufficient surface area on said second portion so that a person can hold said edible support and said comestible with a hand.

99 - 129 (canceled)

130. (Withdrawn) A method of providing a supported frozen comestible comprising:

- (a) providing a comestible comprising a body of an edible substance suitable for freezing,
- (b) providing a composite candy support comprising two edible members in contact with each other suitable for supporting said comestible comprising a body of an edible substance, said two edible members each being other than a candy coating, said composite candy support having first and second portions for supporting said comestible,
- (c) inserting said first portion of said composite candy support into said comestible comprising a body of an

- edible substance, said first portion comprising sufficient surface area and means for adherence within said comestible to support said comestible,
- (d) freezing said comestible and said composite candy support, and
 - (e) leaving said second portion, having sufficient surface area outside of said comestible to provide a utilitarian support for said comestible, whereby a consumer may enjoy a safer, longer lasting composite candy supported frozen confection.

131. (Withdrawn) The method of providing a supported frozen comestible of claim 130, further including a sufficient surface area on said second portion so that a person can hold said composite candy support and said frozen comestible with a hand, said sufficient surface area further includes supplying two handles to said person, one for each hand.

132. (Withdrawn) The method of providing a supported frozen comestible of claim 130 wherein one of said two edible members in contact with each other suitable for supporting said comestible comprising a body of an edible substance comprises candy.

133. (Withdrawn) The method of providing a supported frozen comestible of claim 130 wherein the other of said two edible members in contact with each other suitable for supporting said comestible comprising a body of an edible substance comprises a selection from a group consisting essentially of a) candy, b) comestible pieces, said comestible pieces includes a selection from a group consisting essentially of nuts, fruit, including coconut, candy pieces, crushed candy, a non substantial amount of rice or grain, c) combined comestible pieces, and d) a comestible substantially other than candy, said comestible substantially other than candy comprises a selection from a group consisting essentially of peanut butter, mint, chewing gum, ice cream, gelatin, and dried fruit puree.

134. (Withdrawn) The method of providing a supported frozen comestible of claim 130, further including a free standing base for providing a free standing supported frozen comestible.

135. (Withdrawn) The method of providing a supported frozen comestible of claim 130, further including a lollipop placed on said composite candy support within said frozen supported comestible for a triple treat, said lollipop provides increased surface area for adherence of said supported

frozen comestible to said composite candy support for consumption, said lollipop further includes a plurality of confections placed concentrically on said composite candy support.

136. (Withdrawn) The method of providing a supported frozen comestible of claim 130, further including an edible moisture proof barrier coating on said composite candy support comprising a) means for preventing the transfer of moisture from said frozen comestible comprising a body of an edible substance to said composite candy support, b) means for providing a secure hold of said frozen comestible to said composite candy support for consumption of said supported frozen comestible, c) means for providing a prolonged shelf life for said supported frozen comestible, d) means for providing additional flavor and enjoyment on said composite candy support, said moisture proof barrier coating further includes texture for lending extra adherence of said frozen comestible comprising a body of an edible substance to said composite candy support, said texture further provides an easier grip for the fingers.

137. (Withdrawn) The method of providing a supported frozen comestible of claim 130, further including a free standing

base for providing a free standing supported frozen comestible.

138. (Withdrawn) The method of providing a supported frozen comestible of claim 130, further including a moveable sleeve of a predetermined shape surrounding the sides of said comestible comprising a body of an edible substance, for exposing said comestible for consumption, and for providing a push pop supported comestible, said moveable sleeve of a predetermined shape further comprises an edible sleeve.

139 - 178 (not entered)

179 - 198 (new)

Claims: cancel all claims of record and substitute new claims 179 through 198 (new) as follows:

179. (new) A supported frozen comestible comprising:

- (a) a frozen comestible, and
- (b) a composite candy support comprising two discernable edible members in contact with each other suitable for supporting said frozen comestible, said two discernable edible members each being other than an edible coating, said composite candy support having a first portion extending into said frozen comestible, said first portion having sufficient surface area and means for adherence within said frozen comestible to support said comestible, said composite candy support having a second portion extending outside said frozen comestible, said second portion having sufficient surface area to provide a utilitarian support for said frozen comestible.

180. (new) The supported frozen comestible of claim 179 wherein one of said two discernable edible members comprises candy.

181. (new) The supported frozen comestible of claim 179 wherein the other of said two discernable edible members comprises a selection from the group consisting essentially of candy, nuts, a non substantial amount of rice or grain, fruit including coconut, crushed candy, pieces of candy

including mini size pieces of individually coated or non coated candies, peanut butter, mint, chewing gum, ice cream, gelatin, and dried fruit puree.

182. (new) The supported frozen comestible of claim 179, further including an edible moisture barrier on said composite candy support for preventing the transfer of moisture from said frozen comestible to said composite candy support, said moisture barrier further includes texture for extra adherence of said frozen comestible to said composite candy support, said texture further provides an easier grip.

183. (new) The supported frozen comestible of claim 179 wherein said second portion of said composite candy support comprises sufficient surface area so that a person can hold said composite candy support and said frozen comestible with a hand, said second portion further includes supplying two handles to said person, one for each hand.

184. (new) The supported frozen comestible of claim 179, further including a plurality of members in contact with said two discernable edible members on said

composite candy support for providing a stronger support and additional flavor, wherein said plurality of members comprises candy, wherein said plurality of members comprises chewing gum.

185. (new) The supported frozen comestible of claim 179, further including a lollipop placed on said composite candy support within said frozen comestible, said lollipop provides increased surface area for adherence of said frozen comestible to said composite candy support, said lollipop further includes a plurality of confections placed concentrically on said composite candy support wherein said lollipop comprises candy, wherein said lollipop comprises chewing gum, wherein said lollipop comprises a cookie.

186. (new) The supported frozen comestible of claim 179, further including a void in said composite candy support for providing additional adherence of said frozen comestible to said composite candy support, said composite candy support further comprises a plurality of voids.

187. (new) The supported frozen comestible of claim 179, further including means for inhibiting the breakage of said composite candy support comprising a) means for manufacturing said composite candy support with ingredients that sustain more stress against breakage, including providing a chewy candy member in contact with a whipped nougat member, b) means for providing ingredients running in a plurality of directions or a combination of directions for inhibiting the horizontal breaking of said composite candy support, c) using specific combinations and multiple layers of ingredients for making said support stronger, d) means for providing a plurality of differing ingredients running concentrically, parallel, or maneuvered within said composite candy support, including twisted within said composite candy support, e) means for monitoring the amounts of moisture, shortening, sugar, air, air bubbles in said ingredients, f) means for providing a suitable size and shape for supporting said frozen comestible, g) means for providing a mess guard for strengthening and preventing damage to said composite candy support, including wrapping said edible mess guards around said edible supports or placing them on all

sides of said edible support and h) means for providing protective packaging, shipping and handling for ensuring intact products.

188. (new) The supported frozen comestible of claim 179, further including a protective mess guard on said composite candy support, for providing a physical barrier for effectively keeping fingers from melting ingredients and from getting messy, wherein said protective mess guard comprises an inedible mess guard, wherein said mess guard comprises an edible mess guard.

189. (new) A supported frozen comestible comprising:

- (a) a frozen comestible,
- (b) a composite candy support comprising two discernable edible members in contact with each other suitable for supporting said frozen comestible, said two discernable edible members each being other than an edible coating, wherein one of said two discernable edible members comprises candy, wherein the other of said two discernable edible members comprises a selection from the group consisting essentially of candy, nuts, a non substantial amount of rice or grain, fruit including coconut, crushed candy, pieces of candy including mini

size pieces of individually coated or non coated candies, peanut butter, mint, chewing gum, ice cream, filling, nougat, yogurt, gelatin, fruit, and dried fruit puree, said composite candy support having a first portion extending into said frozen comestible, said first portion having sufficient surface area and means for adherence within said frozen comestible to support said frozen comestible, said composite candy support having a second portion extending outside said frozen comestible, said second portion having sufficient surface area so that a person can hold said composite candy support and said frozen comestible with a hand.

190. (new) The supported frozen comestible of claim 189, further including a plurality of edible members in contact with said two discernable edible members on said composite candy support for providing a stronger support and additional flavor.

191. (new) The supported frozen comestible of claim 189, further including means for inhibiting breakage of said composite candy support comprising, a) using an ingredient for sustaining more stress against breakage, including providing a chewy candy member

in contact with a whipped nougat member, b) running said two discernable edible members concentrically, parallel, twisted, or maneuvered within said composite candy support, c) monitoring the amounts of moisture, shortening, sugar, air, air bubbles, and ingredients of said composite candy support, d) providing a mess guard for strengthening and for preventing damage to said composite candy support, including wrapping said mess guard around said composite candy support or placing said mess guard on all sides of said composite candy support, and e) providing density and a proper shape and thickness relative to the strength of said ingredients of said composite candy support.

192. The supported frozen comestible of claim 189, further including an edible moisture proof barrier coating on said composite candy support comprising a) means for preventing the transfer of moisture from said frozen comestible to said composite candy support, b) means for providing a secure hold of said frozen comestible to said composite candy support for consumption of said supported frozen comestible, c) means for providing a prolonged shelf life for said supported frozen comestible in

a store, d) means for providing additional flavor on said composite candy support.

193. (new) The supported frozen comestible of claim 189, further including a void in said composite candy support for allowing said frozen comestible to flow through said composite candy support for providing increased adherence of said frozen comestible to said composite candy support, said composite candy support further comprises a plurality of voids.

194. (new) The supported frozen comestible of claim 189, further including a protective mess guard on said composite candy support, for providing a physical barrier for effectively keeping fingers from melting ingredients on said composite candy support and from getting messy, wherein said protective mess guard comprises an inedible mess guard, wherein said mess guard comprises an edible mess guard.

195. (new) A supported frozen comestible comprising:

- (a) a frozen comestible, and
- (b) means for supporting said frozen comestible so that a person can consume said supported frozen comestible.

196. (new) The supported frozen comestible of claim 195, wherein said means for supporting said frozen comestible comprises a composite candy support comprising two discernable edible members in contact with each other suitable for supporting said frozen comestible, said two discernable edible members each being other than an edible coating, said composite candy support having a first portion extending into said frozen comestible, said first portion having sufficient surface area and means for adherence within said frozen comestible to support said comestible, said composite candy support having a second portion extending outside said frozen comestible, said second portion having sufficient surface area for providing a utilitarian support for said comestible.

197. (new) The supported frozen comestible of claim 196 wherein one of said two discernable edible members comprises candy.

198. (new) The supported frozen comestible of claim 196 wherein the other of said two discernable edible members comprises a selection from the group consisting essentially of candy, nuts, a non

substantial amount of rice or grain, fruit
including coconut, crushed candy, pieces of candy
including mini size pieces of individually coated
or non coated candies, peanut butter, mint, chewing
gum, ice cream, filling, nougat, yogurt, gelatin,
fruit, and dried fruit puree.

Remarks - General

In response to communications of March 7, 2005 from the Office of Petitions, concerning the Analysis, a grantable petition under 37 CFR 1.137(a) must be accompanied by:

Concerning item 1, the required reply:

By the above renewed petition, Applicant has submitted new claims without new recitations or combinations of recitations not previously considered which raised new issues in order to place the application in condition for allowance.

Concerning item 2, the petition fee:

Applicant has enclosed a check (number 2830) in the required amount of \$395.00 for the Request for Continued Examination.

Concerning item 3, a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable.

A Decision on Petition document dated March 7, 2005, page 3, paragraph 4, recites: "petitioner appears to base her allegation of unavoidable delay on the fact that petitioner feels the

failure to have the copies of the Disclosure Documents with the file was unavoidable."

In response, the Office, however, does not address Applicant's pertinent arguments found on pages 7, and 8, of her petition, regarding Applicant's prior request for the application of section 707.07 (please see below).

Applicant had timely filed Amendment C in reply to the Office Action of May 23, 2003. On page 52 of Amendment C, Applicant *had EXPRESSLY requested assistance prior to Amendment D*, pursuant to M.P.E.P. Sections 706.03(d) and Section 707.07(j), in order to put the application in "*allowable condition* as soon as possible and without the need for further proceedings."

The Final Office Action of March 9, 2004 replied:

"It is noted that the applicant has requested help from the examiner. Besides the fact applicant either has had some experience prosecuting applications or has had experienced help, as evidenced by the fairly accomplished communications, the Office provides help or makes suggestions relative to patentability, if the Office has discerned allowable subject matter. As of now that has not been the case."

Applicant's amendment necessitated the new ground(s) of
rejection presented in the Office action.

Accordingly, **THIS ACTION IS MADE FINAL."**

Regarding the Final Office Action above, Appliance asserts that a person, while educated and can study up to improve their situation, and who is working to improve with subsequent amendments, does not mean that they are qualified for the proper preparation of legal work, such as the difficult task of writing allowable legal claims, or writing a series of allowable claims for numerous divisional applications.

The Advisory Action of 7/20/2004 relates that Applicant's proposed amendment(s) will not be entered because (a) they raise new issues that would require further consideration and/or search and, c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; The Advisory Action also relates that, " the proposed amendment is replete with examples of new recitations or combinations of recitations not previously considered..."

At the time of the review of Applicant's Amendment D, filed June 8, 2004, and before the Advisory Action of 7/20/2004 had been sent, all references had been prosecuted and all requirements had been met. There was no delay on Applicant's part in prosecuting

the application. As above, Applicant had also expressly requested previously in writing the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. Section 706.03(d) and Section 707.07(j) in Amendment C, which was also noted in Applicant's request to Revive the Application. (above). Section 707.07(j) states:

707.07(j) State When Claims Are Allowable [R-2]

I. < INVENTOR FILED APPLICATIONS

When, during the examination of a pro se application it becomes apparent to the examiner that there is patentable subject matter disclosed in the application, the examiner should draft one or more claims for the applicant and indicate in his or her action that such claims would be allowed if incorporated in the application by amendment.

This practice will expedite prosecution and offer a service to individual inventors not represented by a registered patent attorney or agent. Although this practice may be desirable and is permissible in any case deemed appropriate by the examiner, it will be expected to be applied in all cases where it is apparent that the applicant is *unfamiliar with the proper preparation* and prosecution of patent applications.

ALLOWABLE EXCEPT AS TO FORM

When an application discloses patentable subject matter and it is apparent from the claims and applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and, when possible, should offer a definite suggestion for correction. Further, an examiner's suggestion of allowable subject matter may justify indicating the possible desirability of an interview to accelerate early agreement on allowable claims.

If the examiner is satisfied after the search has been completed that patentable subject matter has been disclosed and the record indicates that the applicant intends to claim such subject matter, the examiner may note in the Office action that certain aspects or features of the patentable invention have not been claimed and that if properly claimed such claims may be given favorable consideration.

Since the amendment was rejected on the basis of "examples of new recitations," and all the references had been prosecuted, Applicant respectfully submits that patentable matter did exist, prior to the Advisory Action of 7/20/2004, and that the Office under section 707.07 did stop with a bare objection or rejection of the claims. Applicant submits that section 707.07 should have been applied at this time, as requested, instead of a bare objection or rejection of the claims. Applicant respectfully submits that her timely amendment did contain a full reply, addressed all issues, met with all the requirements, did contain patentable subject matter (as did Amendments B and C) and it was "apparent" that "Applicant's arguments" were "intended to be directed to such patentable subject matter." Applicant respectfully asks, if one could not get the requested assistance at this point, when requested, and acknowledged, what is there for Applicant to do? Applicant respectfully submits that the rejection of Applicant's timely and full reply was unjustified, pursuant to the teachings of MPEP 707.07 (j).

Applicant's patentable material can be found in:

Claim 99 of Amendment C - filed August 18, 2003:

99. A supported frozen comestible comprising:

- (a) a frozen comestible comprising a body of an edible substance, and

- (b) a composite candy support comprising two discernable edible members in contact with each other suitable for supporting said frozen comestible, said two discernable edible members each being other than an edible coating, said composite candy support having a first portion extending into said frozen comestible, said first portion having sufficient surface area and means for adherence within said frozen comestible to support said comestible, said composite candy support having a second portion extending outside said frozen comestible, said second portion having sufficient surface area to provide a utilitarian support for said comestible.

Claim 139 of Amendment D - filed June 8, 2004 recites:

139. A supported frozen comestible comprising:

- (a) a frozen comestible comprising a body of an edible substance, and
- (b) a *[substantially rigid,] composite candy support comprising two discernable edible members in contact with each other suitable for supporting said frozen comestible, *[said two discernable edible members each having a differing flavor,] said two discernable edible members each being other than an edible coating, said composite candy support having a first portion extending

into said frozen comestible, said first portion having sufficient surface area and means for adherence within said frozen comestible to support said comestible, said composite candy support having a second portion extending outside said frozen comestible, said second portion having sufficient surface area to provide a utilitarian support for said comestible.

*[] new recitation

In addition, if the Office were to include, "When an application discloses patentable subject matter and it is apparent from the claims and applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims." above, Applicant submits that Applicant's claims 72, 73, and 76, of Amendment B, also contain patentable material.

Claim 72 of Amendment B - January 18, 2003 recites:

72. A supported comestible comprising:

- (a) a comestible comprising a body of an edible substance,
and
- (b) a substantially composite edible support suitable for
supporting said comestible, said substantially composite

edible support having a first portion extending into said comestible, said first portion having sufficient surface area and means for adherence within said comestible to support said comestible, said substantially composite edible support having a second portion extending outside said comestible, said second portion having sufficient surface area to provide a utilitarian support for said comestible.

73. The supported comestible of claim 72 wherein said comestible comprising a body of an edible substance is substantially frozen.

76. The supported comestible of claim of 72 wherein said edible support comprises a selection from the group comprising, a) a sugar, b) a sugar substitute, c) a candy ingredient, d) candy, e) a candy bar, f) a candy bar ingredient, g) a confection, h) a confection substitute, i) fruit, j) nuts, k) grain, l) a medicinal ingredient, and m) chewing gum, said edible support comprises edible particulate matter, said edible support comprises a homogenous comestible.

Applicant respectfully submits that it was "apparent" from reviewing Applicant's replies to the Office Actions for the above application, for the *last four years*, including the many

notations that the claims were often rejected for being based on a non-enabling disclosure (for example, please see page 2 of Office Action of 5/23/2003), that patentable material was present, and that Applicant needed the claim assistance as requested. Applicant respectfully submits that "a bare objection or rejection of the claims," in the presence of patentable material in a pro se application, when "the claims are intended to be directed to such patentable subject matter" is unjustified. Applicant submits that Amendments B, C, and D had claims containing patentable material, and Amendment D had prosecuted all the rejections prior to the sending of the Advisory Action of 7/20/2004, rejecting Applicant's reply to the Final Office Action.

Applicant also respectfully submits that it was "apparent" that the claims are intended to be directed to such patentable subject matter from Applicant's drawings and from replete examples of applicant's composite support in the specification. Page 26 of the specification recites:

"Fig. 1 shows a frozen ice cream pop having a frozen confection 84 on the top, such as ice cream, frozen pudding, etc. Confection 84 is supported by an edible rectangular composite support 62, which has been inserted into confection 84. Stick 62 serves as a handle for the user. Support 62 is

made of a candy bar-like combination that has different ingredients."

Pages 28 and 29 of the specification recite:

"Preferably, support 62 is an elongated and slenderized, multi-ingredient, candy bar (made to a suitable size and shape to support the confection) such as those found at the check-out counter of a grocery store.

Another suitable candy bar that contains the ingredients of a whipped chocolate nougat center 90...is one sold under the trademark Milky Way, also by Mars, Incorporated.

Page 30 recites:

A candy bar sold under the trademark Baby Ruth, also by Nestle, with the ingredients, peanuts, caramel and nougat, also if slenderized is a rich, edible support for confection 84.

Additionally, Applicant had brought to the attention of the Office the reason for adding the new recitations, under "Remarks:"

"Applicant has also rewritten all claims for overcoming the rejections under Section 35 U.S.C 103(a), and so as not to

infringe with the aspects of Applicant's own divisional applications, from the above application."

In the Amendment of June 8, 2004, Applicant was working in a bona-fide manner to write a more precise claim(s) so it could be allowable as distinguished from her divisional applications. Noting the above would make "apparent" that Applicant was not familiar with "the proper preparation" of claim writing, and the "the proper preparation" of *divisional applications*, and she was in need of assistance. Applicant's recitations were easily correctable. Applicant respectfully submits that given the diligence of the Applicant, while the claims are intended to be directed to such patentable subject matter, there was justification to apply section 707.07(j).

Applicant respectfully submits that a telephone interview (or other brief communication) (easily achieved and not uncommon) just to suggest that the recitations be removed, at this time, was necessitated in keeping with MPEP 707.07 (j).

"it will be expected to be applied in all cases where it is apparent that the applicant is *unfamiliar with the proper preparation* and prosecution of patent applications." "Further, an examiner's suggestion of allowable subject matter may justify indicating the possible desirability of an interview to accelerate early agreement on allowable claims."

Applicant respectfully submits that the Office could have determined over a four year period, that the recitations, which

were easily correctable, were a result of being "*unfamiliar with the proper preparation and prosecution of patent applications.*" This communication and assistance, vital to the advancement of the application at this time, while necessitated under section 707.07(j), was not forthcoming.

Applicant respectfully submits that the application of section 707.07(j), as **requested in writing**, acknowledged, and necessitated, "the examiner should draft," "it will be expected" "all cases," to easily remove the unallowed recitations prior to the Advisory Action of 7/20/2004, would have expedited prosecution and would "accelerate early agreement on allowable claims." (This practice will expedite prosecution and offer a service to individual inventors not represented by a registered patent attorney or agent. (above) .

Applicant respectfully, and importantly submits that applying section 707.07(j) at the time of Amendment D and before the Advisory Action, would have required no further major reply, nor abandonment of the application. Applicant respectfully submits that she did not cause a delay but acted as a reasonable and prudent person in timely filing her complete reply and requesting assistance with the claims. Applicant submits that she was entitled, as other pro se applicants, to assistance, or

suggestions in order to enter a proper claim if her claims were improper, when patentable material was present, and desired, before a final rejection.

On September 27, 2004 Applicant received a phone call from the Office. Applicant was advised not to reply to the Advisory Action, but to wait and file a Request to Revive the application. Applicant complied with the Office and did not send a reply, but filed a Request for Revival of the application.

The correspondence of March 7, 2005 on page 1, also recites: "a reply to the Office action was filed on June 15, 2004 (Certificate of Mailing date of June 8, 2004)"

"In addition to an amendment, petitioner filed a paper which, in substance is an affidavit under 37 CFR 1.131." "A portion of the reply was returned to petitioner. Specifically, the Office returned copies of three Disclosure Documents. Petitioner states the disclosure documents were originally filed on July 5, 1994, July 4, 1996 and May 1, 1999." "The absence of the copies of the Disclosure Documents, attached to the affidavit, failed to have an impact in so far as the affidavit was not considered."


In response, Applicant's three Disclosure Document Exhibits, in her reply to the Office Action included for Applicants right to a proper prosecution, regardless of Applicant's use for them, or their outcome, were unjustly taken out of her reply and sent back to her more than twice, unread.

In summary, Applicant respectfully submits that she had met all the requirements of a full and timely reply, had done everything as known by her, with good intention to move the application forward. She has put forth a Herculean effort towards this application and on its many divisionals, which is most important to her. She respectfully submits that she had asked for needed assistance with the claims, which was not forthcoming, and then did her best, regardless of the lack of assistance, to write appropriate claim(s) so as not to conflict with the prosecution of her *upcoming divisionals*. Applicant submits that she had made a complete response to the best of her ability and had done it in a timely manner. Applicant respectfully submits that the Final Rejection of Applicant's amendment, mailed June 8, 2004, was unjustified pursuant to MPEP section 707.07(j), for a pro se applicant. She respectfully requests that the matter of abandonment for the above application be reversed.

It is Applicant's utmost desire to work with the Office to overcome all the objections for placing the above application in

condition for allowance. Applicant gladly welcomes any suggestions from the Office, which is invited to call me at the number below, to discuss these suggestions, in order to place the application in this condition, as soon as possible.

Very Respectfully,

A handwritten signature in cursive script, reading "Alice O. Kiely", written over a horizontal line.

Alice O. Kiely

71 Stonewall Court

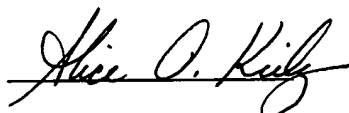
Yorktown Heights, NY 10598

Tel. (914) 245-6661

Fax (914) 245-4482

Certificate of Mailing: I certify that on the date below, this document and referenced attachments, if any, will be deposited with the U.S. Postal Service as first class mail in an envelope addressed to "Assistant Commissioner for Patents" Washington D.C. 20231.

2005 April 11

A handwritten signature in cursive script, reading "Alice O. Kiely". The signature is written in dark ink and is positioned above the printed name.

Alice O. Kiely

encl: return postcard
RCE Submission
Check for \$395.00